

Small Business Administration

§ 121.1001

§ 121.903 How may an agency use size standards for its programs that are different than those established by SBA?

(a) Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. In limited circumstances, if they decide the SBA size standard is not suitable for their programs, then agency heads may establish a more appropriate small business definition for the exclusive use in such programs, but only when:

- (1) The size standard will determine:
 - (i) The size of a manufacturing concern by its average number of employees based on the preceding twelve calendar months, determined according to § 121.106;
 - (ii) The size of a services concern by its average annual receipts over a period of at least three years, determined according to § 121.104;
 - (iii) The size of other concerns on data over a period of at least three years; or,
 - (iv) Other factors approved by SBA;
- (2) The agency has consulted in writing with SBA's Assistant Administrator for Size Standards at least fourteen (14) calendar days before publishing the proposed rule which is part of the rulemaking process. The written consultation will include:
 - (i) What size standard the agency contemplates using;
 - (ii) To what agency program it will apply;
 - (iii) How the agency arrived at this particular size standard for this program; and,
 - (iv) Why SBA's existing size standards do not satisfy the program requirements;
- (3) The agency proposes the size standard for public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553;
- (4) The agency provides a copy of the proposed rule, when it publishes it for public comment as part of the rulemaking process, to SBA's Assistant Administrator for Size Standards; and
- (5) SBA's Administrator approves the size standard before the agency adopts a final rule or otherwise prescribes the size standard for its use. The agency's

request for the SBA Administrator's approval must include:

- (i) Copies of all comments on the proposed size standard received in response to the proposed rule;
 - (ii) A separate written justification for the intended size standard;
 - (iii) A copy of the intended final rule if available at that time, or a copy of the intended final rule and preamble prior to its publication; and
 - (iv) Other information SBA may request in connection with the request.
- (b) When approving any size standard established pursuant to this section, SBA's Administrator will ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries, and consider other relevant factors.
- (c) Where the agency head is developing a size standard for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to section 601(3) of the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish a size standard different from SBA's which is more appropriate for such analysis.

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§ 121.904 When does SBA determine the size status of a business concern?

For compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of the date set forth in the request of the other agency.

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PROCEDURES FOR SIZE PROTESTS AND REQUESTS FOR FORMAL SIZE DETERMINATIONS

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) *Size Status Protests.* (1) For SBA's Small Business Set-Aside Program, including the Property Sales Program, the following entities may file a size protest in connection with a particular procurement or sale:

- (i) Any offeror;
- (ii) The contracting officer;